

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **March 25, 2003**

AGENDA ITEM NO.: 9

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **License Agreement with Bluffwalk Center, LP**

RECOMMENDATION:

Approve the attached resolution granting permission to Bluffwalk Center, LP to use the right-of-way adjoining 1329 Commerce Street for a parking lot.

SUMMARY:

Bluffwalk Center, LP plans to construct a 43-room hotel, a high-end restaurant, a micro-brewery and a conference center at 1326 Commerce Street. In conjunction with the City-owned parking lot they plan to purchase, Bluffwalk Center requires use of the adjoining right-of-way to allow ample parking spaces until other land can be purchased for additional parking and/or a parking garage is constructed per the Downtown Master Plan.

The Downtown Master Plan also calls for Commerce Street to continue east and connect to Washington Street. However, this is not foreseen to occur for several years due to funding constraints. It is for this reason that a license agreement is proposed rather than the sale of the property – to ensure that the City can reclaim the property when needed.

PRIOR ACTION:

November 6, 2001 – Physical Development Committee

March 11, 2003 – Council approved sale of adjacent parking lot

FISCAL IMPACTS: None

CONTACTS: Rachel Flynn @ 847-1435 ext. 253 and Walter Erwin @ 847-1310

ATTACHMENTS: Resolution, License Agreement and Map

REVIEWED BY: lkp

BE IT RESOLVED That the City Council of the City of Lynchburg, in accordance with State Code Section 15.2-1800, does hereby authorize the City Manager to sign a license agreement with Bluffwalk Center, LP, for the use of a portion of the City's right-of-way on Commerce Street (located directly adjacent to 1329 Commerce Street) for parking serving the future Bluffwalk Center.

Adopted:

Certified:

Clerk of Council

065L



License Agreement to Utilize Public Right-of-Way

THIS LICENSE AGREEMENT, to utilize a public right-of-way, made and dated this 1st day of April, 2003, by and between the CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the "City," and BLUFFWALK CENTER, LP, a Virginia Limited Partnership, hereinafter referred to as "Bluffwalk."

WHEREAS, one of the public streets in the City of Lynchburg is named Commerce Street which is located in the downtown area and a portion of Commerce Street has not been opened to public use, the unopened portion of Commerce Street being described as beginning at the northerly corner of Horseford Road adjoining Tax Map No. 46-04-005, then northeast along the right of way line of the unopened section of Commerce Street approximately 170 feet to the corner of Tax Map No. 46-04-009 and Tax Map No. 46-04-007, then on a diagonal approximately 35 feet to the easterly boundary of the opened Commerce Street, then approximately 45 feet south along said boundary to the southwest boundary of the unopened section of Commerce Street, then southeast approximately 130 feet to the eastern corner of Horseford Road and the section of Commerce Street, then northwest approximately 60 feet along Horseford Road to the point of beginning. The unopened area of Commerce Street contains approximately 9400 square feet or .22 acres, more or less; and,

WHEREAS, Bluffwalk is in the process of developing a forty-three-room hotel, convention center, a restaurant and microbrewery, hereinafter referred to as the "Project," within the City of Lynchburg. The Project is to be located between Jefferson and Commerce Streets at the corner of Horseford Road and Bluffwalk has requested permission from the City to use the unopened portion of Commerce Street as parking for the Project; and,

WHEREAS, the City recognizes that access to adequate parking is necessary for the success of the Project and is willing to allow Bluffwalk to use the unopened portion of Commerce Street as parking for the Project until such time as the City decides to open the unopened section of Commerce Street to the public;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the City and Bluffwalk mutually agree as follows:

1. PERMISSION TO USE. The City hereby gives Bluffwalk permission to use the unopened portion of Commerce Street, as described above, as parking for the Project. The property cannot be used for any other purpose without the prior written permission of the City. A sketch showing the approximate location of that portion of Commerce Street that Bluffwalk can use as parking for the Project is attached hereto as “Exhibit A.”

2. USE AND MAINTENANCE. Before using the unopened portion of Commerce Street for parking Bluffwalk must submit detailed plans for the parking facilities to the City and the City must approve such plans in writing. The parking facilities must be installed and maintained in a safe and workmanlike manner and must comply with all applicable building and safety codes, all at Bluffwalk’s sole cost and expense. The City’s Department of Community Planning and Development will monitor the location, installation and maintenance of the parking facilities. City representatives will be permitted to inspect the parking facilities at all reasonable times to ensure that they are properly installed and maintained. The failure of Bluffwalk to install or maintain the parking facilities in a safe manner, to allow the City to inspect the parking facilities or to abide by any guidelines or rules that may be established by the Department of Community Planning and Development regarding the location, installation or maintenance of the parking facilities will be grounds for the termination of this license agreement as provided in paragraph 8. Termination, of this agreement.

3. TERM. This license agreement shall be for an indefinite period, beginning on April 1 2003 and ending at such time as the City decides to open the unopened portion of Commerce Street to the public. In no event shall this license agreement be interpreted to have been granted for a period of time that would violate the provisions of Section 15.2-2100 of the Code of Virginia.

4. REDESIGN, RELOCATION OR REMOVAL. If the City determines that the parking facilities pose a hazard to either pedestrian or vehicular traffic, Bluffwalk agrees that upon notice from the City it will redesign or relocate the parking facilities or completely remove the same, whichever the City directs, at Bluffwalk’s sole cost and expense. The City shall have no obligation to compensate Bluffwalk for any expenses it may suffer as a result of any redesign, relocation or removal. In the event Bluffwalk does not redesign, relocate or remove the parking facilities with thirty (30) days after having been given notice to do so by the City, then in order to protect the public safety, the City shall have the right to remove the same and to bill Bluffwalk for the removal costs. If it becomes necessary to redesign, relocate or remove the parking facilities City representatives will work with Bluffwalk to try and identify substitute parking for the Project.

In order to minimize the possibility that the parking facilities will pose a hazard to pedestrian or vehicular traffic, City employees will review the designs for the parking facilities prior to installation and will work with Bluffwalk to minimize any potential hazards.

Further, upon notice from the City or any utility company holding a franchise from the City that the parking facilities need to be temporarily unopened or relocated because of pending utility or construction work, Bluffwalk, at its sole cost and expense, will temporarily close or relocate the parking facilities in accordance with the entity performing the utility or construction work.

5. INDEMNITY AND INSURANCE. Bluffwalk agrees to indemnify, hold harmless and defend the City, its employees and officials, from and against any loss, damage and liability occasioned by, growing out of or arising or resulting in any manner whatsoever from Bluffwalk's installation, maintenance and operation of the parking facilities in the public right-of-way. Bluffwalk further agrees to secure comprehensive general liability insurance in an amount of not less than \$1,000,000.00, combined single-limit coverage against general public liability for injuries to or death of persons or damage to property. Such insurance policy shall also name the City of Lynchburg, its employees and officials, as insured parties.

The insurance required of Bluffwalk herein shall be primary and any insurance or self-insurance maintained by the City are secondary and apply only in excess of and shall not contribute with the insurance obtained by the Bluffwalk. Bluffwalk shall pay any deductibles or self-insurance retention applicable to the required coverage and the City shall not be required to participate therewith. Bluffwalk shall deliver to the City a copy of said insurance policy or certificate showing the same to be in full force and effect before installing the parking facilities. Such insurance policy or certificate shall contain provisions providing the City shall be given 30 days notice prior to any cancellation or reduction in the required insurance coverage. Notwithstanding the notice provisions of Paragraph 8. Termination of this license agreement the failure of Bluffwalk to maintain such insurance coverage throughout the term of this license agreement shall be grounds for the immediate termination hereof. Bluffwalk's responsibility to the City hereunder is not limited to the amount of such insurance coverage.

7. PROPERTY RIGHTS. Bluffwalk will not become vested with any property rights in any portions of Commerce Street being utilized as parking facilities under this license agreement. The rights and privileges extended to Bluffwalk under this license agreement shall automatically terminate at such time as the City decides to open the unopened portion of Commerce Street to the public. The City agrees that it will give Bluffwalk as much notice as reasonably possible of any plans to open the unopened portion of Commerce Street to the public. When the City decides to open the unopened portion of Commerce Street to the public City representatives will work with Bluffwalk to try and identify substitute parking for the Project. At such time as the City revokes the rights and privileges granted to Bluffwalk under this license agreement, all of the improvements and encroachments in the public right-of-way must be removed at Bluffwalk's sole cost and expense. In the event Bluffwalk does not remove the parking facilities with thirty (30) days after having been given notice to do so by the City, the City shall have the right to remove the same and to bill Bluffwalk for the removal costs.

8. TERMINATION. The failure of Bluffwalk to abide by any of the terms and condition of this license agreement and the failure of Bluffwalk to remedy such default within a period of thirty (30) days after being given notice by the City to remedy such default shall be grounds for the termination of this license agreement. Upon termination of this license agreement Bluff, at its sole cost and expense shall promptly remove all of the parking facilities it installed in the public right-of-way. If Bluffwalk fails to remove the parking facilities the City shall have the right to remove any and all parking facilities installed by Bluffwalk from the public right-of-way and to bill Bluffwalk for the removal costs.

9. NOTICE. Notices to Bluffwalk shall be sufficient if sent by registered mail, postage prepaid, addressed to Hal C. Craddock, President, Bluffwalk Center, LP, 1312 Jefferson Street, Lynchburg, VA 24504 or such other address or persons that Bluffwalk may from time-to-time designate. Notices to the City shall be sufficient if sent by registered mail, postage prepaid, addressed to the Lynchburg City Manager, City Hall Building, P. O. Box 60, Lynchburg, VA 24505, or to such other persons as the City may designate in writing from time-to-time.

WITNESS the following signatures and seals as of the year and day first written above.

CITY OF LYNCHBURG

By: _____
L. Kimball Payne, City Manager

Attest:

Clerk of Council

BLUFFWALK CENTER, LP.

By; _____
Hal C. Craddock, President

Attest:

Secretary

POOLS
& METAL
CORR